

Comments should include the file number, REG 17-02-76. Comments and materials received will be available for public inspection during normal business hours at the Service's Division of Law Enforcement, Suite 600, 1612 K Street, NW., Washington, D.C. 20006

#### FOR FURTHER INFORMATION CONTACT:

Mr. Marshall L. Stinnett, Special Agent in Charge, Branch of Regulations and Penalties, Division of Law Enforcement, Fish and Wildlife Service, Suite 600, 1612 K Street, NW., Washington, D.C. 20006, 202-343-9237.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

The West Indian manatee, *Trichechus manatus*, is a protected marine mammal which has also been listed as an Endangered species. The only sizeable manatee population in the United States inhabits inland and coastal waters of the State of Florida. During warmer months some of the animals move into coastal waters of neighboring states. Currently available data suggests there is a manatee population in Florida of between 800 and 1,000. Available population estimates have been evaluated in light of the known level of manatee mortality in Florida, based on information gathered by the National Fish and Wildlife Laboratory of the U.S. Fish and Wildlife Service, and the University of Miami. Estimates indicate that the population is undergoing a serious decline. The high rate of mortality could also indicate a larger population than has been assumed. Until better data are available, however, it is prudent to base management policies on the most conservative estimates of population size.

Results of the cooperative manatee salvage and mortality study conducted by the University of Miami and the National Fish and Wildlife Laboratory of the U.S. Fish and Wildlife Service indicate that human activities are by far the greatest identifiable cause of manatee mortality in Florida. More than 50 percent of human-caused deaths investigated during the salvage program were attributed to boat or barge collisions. Furthermore, a high percentage of living manatees bear wounds and deformities caused by propellers. Additional human-related causes of manatee mortality are the tangling of manatees in nets and discarded fishing lines, and the harassment of manatees by apparently well-meaning, as well as vandalous, swimmers and divers. Such harassment will often force manatees away from warm springs and into colder water, where they become stressed and are more prone to disease. Harassment also

causes disruption of the relationship between females and their nursing calves.

The major source of the above information is Brownell, Robert L., Jr., Katherine Ralls, and Randal R. Reeves (editors), *Report of the West Indian Manatee Workshop*, Orlando, Florida, March 27-29, 1978, 37 pp.

##### EFFECT OF THE RULEMAKING

The problem of manatee mortality caused by people and their activity was one of the concerns of Congress when it passed the Marine Mammal Protection Act of 1972. House Report 92-707 states that "... H.R. 10420 would provide the Secretary of the Interior with adequate authority to regulate or even to forbid the use of power boats where manatees are found ..." (H.R. Rep. No. 707, 92d Cong., 2d Sess. 17-18 (1972)).

The proposed regulations are intended to exercise this authority. They would allow the Director to establish areas of water under the jurisdiction of the United States, both inland and coastal, within which certain waterborne activities would be restricted or prohibited. Such restrictions could include limits on the speed of boats, as well as other restrictions on activities such as boating, swimming, fishing, water skiing, and skin and scuba diving. The purpose of the regulations, the protection of manatees, is stated in § 17.100.

Section 17.101, Scope, explains that the subpart applies to the West Indian manatee (*Trichechus manatus*). Section 17.102 defines the terms "manatee sanctuary," "manatee refuge," "manatee protection area," "waterborne activity," and "water vehicle." These terms are all crucial to the establishment of areas within which manatees can be protected from harmful interaction with people and their activities.

Section 17.103 provides for the actual establishment of manatee protection areas. The Director, by regulations, may establish sanctuaries within which all waterborne activities, such as boating and swimming, would be prohibited. The Director may also establish refuges in which only certain activities would be prohibited or restricted. As an example, within a particular area boat speed could be limited or the number of swimmers allowed in the water at one time could be restricted.

Section 17.104 states the prohibitions applicable to the protection areas. It explains that it is unlawful to engage in any waterborne activity within a manatee sanctuary, or to engage in any waterborne activity in a manner contrary to that permitted within a manatee refuge by regulations applicable to that refuge. This

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#### DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

#### ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Rulemaking To Provide for the Establishment of Manatee Protection Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rulemaking.

SUMMARY: The Service proposes to provide a means for the Director to establish manatee protection areas. Within these areas certain waterborne activities, such as boating and swimming, would be restricted or prohibited.

Research conducted by the National Fish and Wildlife Laboratory of the U.S. Fish and Wildlife Service and the University of Miami indicate that human activities, such as the operation of motor boats and swimming, in areas where manatees may congregate are a significant cause of manatee injuries and deaths. Any areas established under the proposed rules, if finalized, would reduce the incidence of manatee injuries and deaths by using the provisions of the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 to lessen the likelihood that manatees will encounter boats and people.

DATES: Public comment on this proposed rulemaking is invited. To be considered, comments must be received by February 22, 1979.

ADDRESSES: Comments should be submitted to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036.

section also makes it unlawful to engage in any waterborne activity prohibited by or in a manner contrary to that permitted by any State law or regulation the primary purpose of which is the protection of manatees. finally, the section allows an exception to the prohibitions when engaging in any prohibited activity which is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances.

Section 17.105 provides for the issuance of permits to allow permit holders to engage in activities otherwise prohibited by this subpart.

Emergency establishment of manatee protection areas is provided for in § 17.106. This section would allow the emergency establishment of a protection area if substantial evidence shows there is imminent danger of a taking of one or more manatees.

The final section, § 17.107, is reserved for the listing of designated manatee protection areas.

#### AUTHORITY

This rulemaking and the establishment of manatee protection areas are authorized by sections 101(a), 102(a)(2), 104, 105, and 112(a) of the Marine Mammal Protection Act of 1972, 86 Stat. 1027 (16 U.S.C. 1371(a), 1372(a)(2), 1374, 1375, and 1382(a)); and by sections 4(d) and (f), 9(a)(1)(G), and 11(a) of the Endangered Species Act of 1973, 87 Stat. 884 (16 U.S.C. §§ 1533(d) and (f), 1538(a)(1)(G), and 1540(a)(1)).

NOTE.—The Service has determined that this proposed rulemaking is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. The Department has determined that this is not a significant rulemaking and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The primary author of this proposal is Kenneth J. Hirsh, Legal Specialist, Division of Law Enforcement, U.S. Fish and Wildlife Service, 202-343-9237.

#### REGULATION PROMULGATION

Accordingly, it is hereby proposed to amend Title 50, Chapter I, Subchapter B, Part 17 in the following manner:

1. The table of sections for Part 17 is amended by adding the following, after Subpart J:

#### Subpart J—Manatee Protection Areas

- 17.100 Purpose.
- 17.101 Scope.
- 17.102 Definition.
- 17.103 Establishment of protection areas.
- 17.104 Prohibitions.

17.105 Permits.

17.106 Emergency establishment of protection areas.

17.107 List of designated manatee protection areas [RESERVED]

AUTHORITY: Marine Mammal Protection Act of 1972, 86 Stat. 1027, as amended, §§ 101(a), 102(a)(2), 104, 105, and 112(a) [16 U.S.C. §§ 1371(a), 1372(a)(2), 1374, 1375, and 1382(a)]; Endangered Species Act of 1973, 87 Stat. 884, as amended, §§ 4(d) and (f), 9(a)(1)(G), and 11(a)(1) [16 U.S.C. §§ 1533(d) and (f), 1538(a)(1)(G), and 1540(a)(1)].

2. Part 17 is amended by adding the following new subpart immediately after § 17.95:

#### Subpart J—Manatee Protection Areas

##### § 17.100 Purpose.

This subpart provides a means for establishing areas of water under the jurisdiction of the United States within which certain waterborne activities will be restricted or prohibited for the purpose of preventing the taking of manatees.

##### § 17.101 Scope.

This subpart applies to the West Indian manatee (*Trichechus manatus*), also known as the Florida manatee and as the sea cow. The provisions of this subpart are in addition to, and not in lieu of other regulations contained in this subchapter B which may require a permit or prescribe additional restrictions on the importation, exportation, transportation, or taking of wildlife, and the regulations contained in Title 33, Code of Federal Regulations, which regulate the use of navigable waters.

##### § 17.102 Definitions.

In addition to definitions contained in the Act and in Part 10 of this subchapter, and unless the context otherwise requires, in this subpart: "Manatee sanctuary" means an area in which the Director has determined that any waterborne activity would result in a taking of one or more manatees, including but not limited to a taking by harassment.

"Manatee refuge" means an area in which the Director has determined that certain waterborne activity would result in the taking of one or more manatees, or that certain waterborne activity must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment.

"Manatee protection area" means a manatee refuge or a manatee sanctuary.

"Waterborne activity" includes, but is not limited to, swimming, diving (including skin and scuba diving), snor-

keling, water skiing, surfing, fishing, and the use of water vehicles.

"Water vehicle" includes, but is not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, across, or underneath the surface of the water.

##### § 17.103 Establishment of protection areas.

The Director may, by regulation issued in accordance with 5 U.S.C. 553 and 14 CFR Part 14, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. Any regulation establishing a manatee protection area shall state the following information:

(a) Whether the area is to be a manatee sanctuary or refuge.

(1) If the area is to be a manatee sanctuary, the regulation shall state that all waterborne activities are prohibited.

(2) If the area is to be a manatee refuge, the regulation shall state which, if any, waterborne activities are prohibited, and it shall state the applicable restrictions, if any, on permitted waterborne activities.

(b) A description of the area sufficient enough so that its location and dimensions can be readily ascertained without resort to means other than published maps, natural or man-made physical reference points, and posted signs.

(c) The dates of the year during which the designation as a protection area shall be in effect.

##### § 17.104 Prohibitions.

Except pursuant to a permit issued under the provisions of section 17.105 below,

(a) *Manatee sanctuary*. It is unlawful for any person to engage in any waterborne activity within a manatee sanctuary.

(b) *Manatee refuge*. It is unlawful for any person within a particular manatee refuge to engage in any waterborne activity which has been specifically prohibited within that refuge, or to engage in any waterborne activity in a manner contrary to that permitted by regulation within that area.

(c) *State law*. It is unlawful for any person to engage in any waterborne activity prohibited by, or to engage in any waterborne activity in a manner contrary to that permitted by, any State law or regulation the primary purpose of which is the protection of manatees.

(d) *Exceptions.* Any waterborne activity otherwise prohibited by this section may be engaged in if doing so is reasonably necessary to prevent the loss of life due to weather conditions or other reasonably unforeseen circumstances.

**§ 17.105 Permits.**

The Director may issue permits allowing the permittee to engage in any activity otherwise prohibited by this subpart. Such permits shall be issued in accordance with the provisions of section 17.22 of this Part 17.

**§ 17.106 Emergency establishment of protection areas.**

(a) The Director may establish manatee protection area under the provisions of subsections (b) and (c) below at any time he determines there is substantial evidence that there is imminent danger of a taking of one or more manatees, and that such establishment is necessary to prevent such a taking.

(b) The establishment of a manatee protection area under this section shall become effective immediately upon completion of the following requirements:

(1) Publication of a notice containing the information required by § 17.103 above in a newspaper of gener-

al circulation in each county, if any, in which the protection area lies; and

(2) Posting of the protection area with signs clearly marking its boundaries.

(c) Simultaneously with the publication required by subsection (b) above, the Director shall publish the same notice in the FEDERAL REGISTER. If simultaneous publication is impractical, because of the time involved or the nature of a particular emergency situation, failure to publish notice in the FEDERAL REGISTER simultaneously shall not delay the effective part of the emergency establishment. In such a case, notice shall be published in the FEDERAL REGISTER as soon as possible.

(d) No emergency establishment of a protection area shall be effective for more than 120 days. Termination of an emergency establishment of a protection area shall be accomplished by publishing notice of the termination in the FEDERAL REGISTER and in a newspaper of general circulation in each county, if any, in which the protection area lies.

**§ 17.107 List of designated manatee protection areas [Reserved]**

Dated: January 17, 1979.

LYNN A. GREENWALT,

*Director,*

*Fish and Wildlife Service.*

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